$8,000 was paid and the structural alterations made, doubtless at the appellant's expense, as consideration for his remaining in undisturbed occupation for as long as he pleases, provided rent is paid at the rate stated. The landlord had bound himself not to increase the rent except upon a rise in the assessment. In my view the notice of termination of the tenancy was clearly in breach of such agreement and I would follow the decision in *Charles Clay* v. *British Railways Board*[9] by declaring the notice of termination of the tenancy invalid. The landlord had no grounds for increasing the rent and the appellant's refusal to yield to his landlord's demand therefore gave the latter no legitimate excuse for issuing his notice.

As the agreement is in effect tantamount to a lease in perpetuity, does it follow as a necessary consequence that the agreement should be held void for being in breach of the provisions of the National Land Code? In my view the answer is no. As Wylie C.J. (Borneo) said in *Lin Nyuk Chan* v. *Wong Sz Tsin*: —[10]

"When there has been part performance (and especially in cases where a tenant has gone into possession under an agreement to lease) a court of equity will not usually refuse to decree specific performance because of uncertainty as to some subsidiary matter, but will endeavour to give effect to the intention of the parties."

The authority cited by the learned Chief Justice was *Parker* v. *Taswell*[8] in which Lord Chelmsford L.C. said: —

"It must be borne in mind that this agreement has been partly executed by possession having been taken under it; and there are many authorities to shew that in such a case the court will strain its power to enforce a complete performance. ... The agreement, moreover, is admitted to be sufficiently certain as to all the substantial parts of it, and the only portions of it to which uncertainty is attributed are subordinate matters. No authority has been cited to shew that in such a case specific performance may not be decreed."

As Denning L.J. said in *Inwards* v. *Baker:*

"It is for the court to say in what way the equity can be satisfied."

Here it seems to me that no strain will be imposed upon the powers of this court to give effect to the expressed intention of the parties by holding that the agreement was one for the grant of as long a lease as the law allows. Section 221(3)(b) of the National Land Code provides that the maximum term for a lease of a part only of alienated land shall be 30 years. The law permits no longer term and this court should grant the appellant no less.

I need hardly add that the respondents take the premises subject to the agreement which binds their predecessor in title to give the appellant a lease of the premises: see again, *Inwards* v. *Baker* at page 217. Although the agreement was not a proper instrument for registration as a lease the authorities are clear that it may be treated as an agreement for a lease. The validity of contracts relating to alienated land or any interest therein is explicitly declared in section 206(3) of the National Land Code.

I would accordingly allow this appeal, dismiss the respondents' claim, give judgment for the appellant on his counter-claim and order and declare that the appellant be entitled until February 28, 1988 to remain in peaceful possession of the ground floor of the premises without let or hindrance by the respondents or their successors in title, so long as the appellant pays rent at the rate reserved by their agreement in writing dated June 1, 1964. The appellant will be entitled to costs of the action and of this appeal.

Suffian and **Gill F.JJ.** concurred.

Appeal allowed.

Solicitors: *Skrine & Co.; K. L. Devaser & Co.*

PUBLIC PROSECUTOR v. OOI KEE SAIK & ORS.

[O.Cr.J. (Raja Azlan Shah J.) May 11, 1971]

[Kuala Lumpur — Criminal Trial Nos. 17, 18, 19 & 20 of 1971]

Criminal Law and Procedure — Sedition — Freedom of speech — Sensitive issues — Seditious tendency — Whether speech has tendency to excite disaffection — Line to be drawn between freedom of speech and sedition — Sedition Act, 1948, ss. 3 & 4.

Constitutional Law — Validity of Emergency legislation — Federal Constitution, Art. 150.

The first accused was charged with an offence under section 4(1) (b) of the Sedition Act, 1948, the second accused was charged with publishing the alleged seditious words and the third and fourth accused were charged with printing the alleged seditious words. The seditious words were alleged to be uttered by the first accused at a dinner held by the Democratic Action Party.

Held: the speeches taken as a whole went beyond the limits of freedom of expression. It accused the government of gross partiality in favour of one group and this was calculated to inspire feelings of enmity and disaffection among the people of Malaysia. The speech was also apt to promote feelings of illwill and hostility among the different races in Malaysia and touched on the sensitive issue of the special rights of the Malays. The speech was therefore expressive of a seditious tendency and the accused must be found guilty.

Observations on when line is drawn between freedom of speech and sedition.

[**Editorial Note:** On September 16, 1971, the Federal Court, by a majority of 4 to 1, allowed the appeal of the second accused on the ground that the High Court trial was a nullity on a technical point, being contrary to sertion 138 of the Criminal Procedure Code (Cap. 6). The Federal Court, however, was satisfied that the conduct of the trial was impeccable. The judgment of the Federal Court will be reported in due course.]

Cases referred to:-

(1) *McFarlane* v. *Hulton* [1899] 1 Ch. 884.

(2) *Wallace-Johnson* v. *The King* [1940] A.C. 231, 240.

(3) *Queen Express* v. *Balagangadhar Tilak* I.L.R. (1897) 22 Bom. 112.

(4) *Burns* v. *Ransley* (1949) 79 C.L.R. 101.

(5) *Niharendu Majumdar* v. *King Emperor* (1942) F.C.R. 38.

(6) *Kedar Nath* v. *State of Bihar* A.I.R. 1962 S.C. 955.

(7) *King Emperor* v. *Sadashiv Narayan* L.R. 74 I.A. 89.

(8) *Queen Empress* v. *Amba Prasad* (1898) I.L.R. 20 All. 55, 69.

(9) *Maniben* v. *Emperor* A.I.R. 1933 Bom. 65, 67.

(10) *New York Times Co.* v. *Sullivan* 376 U.S. 255 (1964).

(11) *A.K. Gopalan* v. *State of Madras* A.I.R. 1950 S.C. 27.

(12) *Duncan* v. *State of Queensland* (1916) 22 C.L.R. 536, 576.

(13) *Freightlines etc. Ltd.* v. *State of New South Wales* [1967] 2 All E.R. 436.

(14) *Adegbenro* v. *Akintola* [1963] 3 All E.R. 544, 550-551.

(15) *Special Reference No. 1 of 1964* [1965] 1 S.C.R. 413.

(16) *Bhagat Singh* v. *King Emperor* (1930-33) 58 I.A. 169.

(17) *King Emperor* v. *Benoari Lal Sarma* [1945] A.C. 14.

(18) *Australian Communist Party* v. *The Commonwealth* (1951) 83 C.L.R.1, 178-179.

(19) *Wijeysekera* v. *Festing* [1919] A.C. 646.

(20) *Land Realisation Co. Ltd.* v. *Post Office* [1950] 1 All E.R. 1062.

(21) *Akar* v. *Attorney-General of Sierra Leone* [1969] 3 All E.R. 384, 394.

(22) *Stephen Kalong Ningkan* v. *Government of Malaysia* [1968] 2 M.L.J. 238.

CRIMINAL TRIAL.

Dato Mohamed Salleh bin Abas (Solicitor-General) (*Ajaib Singh* (Sr. Federal Counsel) with him) for the Public Prosecutor.

Sir Dingle Foot Q.C. (*Peter Mooney* and *D. P. Xavier* with him) for the first accused.

Dato S. P. Seenivasagam (*N. Sahadevan* and *Paramjit Singh Gill* with him) for the second accused.

Lee Beng Cheang for third and fourth accused.

Raja Azlan Shah J.: Dr. Ooi Kee Saik (accused No. 1) is charged before this court with an offence under section 4(1)(b) of the Sedition Act, 1948, in that on November 22nd. 1970, at Sun Hoe Peng Restaurant, 25 Light Street, Penang, he uttered seditious words, namely —

"ALLIANCE POLICY OF SEGREGATION: 'EVIDENCE GALORE' — Tonight's dinner is in celebration of Sdr. Lim Kit Siang's release from detention by the Alliance Government. While it is a matter for celebration, it is also an occasion to highlight the grave Alliance error in putting away a man whose speeches during the last election campaign, especially his warnings, have been more than borne out by the events since then. To say that Sdr. Lim Kit Siang's arrest was a mindless over-reaction on the part of the Alliance Government is to be kind to the Alliance Government. The fact that a true Malaysian like Sdr. Lim Kit Siang can be summarily put away without trial, is indeed a very sad testimony to the way democracy is being practised in this country.

The question I keep asking myself, and I am sure there must be thousands of other thinking people in this country who feel the same way that I do, in this: 'Is the Alliance Government making any headway in the problem of forging a new Malaysian nation, of creating a Malaysian identity which truly and honestly reflects the various racial strands in our country?' The answer, sad to say, is a firm and categorical NO. And one of the main reasons for this is because the Alliance Government practises a policy of segregation. While we in the DAP preach a sincere and honest policy of integration, the Alliance policy merely pays lip service to it.

There is evidence galore of the Alliance policy of segregation.

No. 1. TAKE OUR MALAYSIAN ARMY. New and better battalions are being formed from members of one ethnic group. Here you have an excellent opportunity for integration in a vital part of our national structure but this opportunity is being missed.

No. 2. NEW POLICE CONTINGENTS. Here again recruitment mainly from one ethnic group. Another excellent opportunity for integration being missed.

No. 3. SCHOOLS, COLLEGES AND UNIVERSITIES are being organised by different ethnic groups, and everybody is moving along his own separate path. Therefore, the cleavage between our future leaders and intellectuals will be all that more difficult to bridge in years to come.

No. 4. PUBLIC HOUSING. Another avenue for integration not being exploited. Instead, housing and shopping complexes for one ethnic group are still being built all over the country.

No. 5. LAND SCHEMES. Vast land schemes with real opportunities for people of all races to live and work and grow up together. Here again a golden opportunity being missed.

No. 6. GIGANTIC BUSINESS AND INDUSTRIAL CONCERNS are being organised, not for the benefit of ALL poor Malaysians, but again only for the benefit of one ethnic group. The latest of these is the National Corporation. Even the Prime Minister, Tun Abdul Razak, says blatantly that this is for the benefit of one ethnic group, although this huge multi-million dollar corporation is called a 'national' corporation. Can't the Alliance Government imagine for a minute what the reaction of the country will be, and the far-reacting implication of this huge corporation a 'national' corporation when it serves the interests of only one ethnic group? Is it being suggested that other groups in this country are not part of the national structure? Or is this another bad example of governmental arrogance?

Therefore, while we in the DAP strive for a policy of integration, the formation of a solid infra-structure, a solid mesh-work, which will make it physically impossible for anyone in this country to act and to behave in any way except as a Malaysian citizen, the Alliance Government prefers to hold tea-parties.

The DAP is a clear-cut party with a clear-cut policy. But more than anything else, the DAP is a pro-Malaysian party, pro-every single Malaysian citizen irrespective of his racial origin. In fact, the more exotic his racial origin, the more he is to be welcomed because in essence we are multi-racial.

It seems obvious to me that if our nation is to survive, in fact if any nation is to survive, then we must have a common denominator. A Malaysian citizen is a Malaysian citizen, full stop, and without a whole list of restrictive clauses. Therefore, whenever there are soothing but unnecessary pronouncements by Alliance ministers to the effect that 'there is a place for all under the Malaysian Sun', one begins to suspect that there are people in high places who do not agree that we all have a common denominator, that these people may be thinking in terms of comfortable shady places for one group of citizens, and hot uncomfortable places for other groups of citizens."

Fan Yew Teng (accused No. 2) is charged with publishing the alleged seditious words in the December (1970) issue of *The Rocket* (English edition), the official publication of the Democratic Action Party, an offence under section 4(1)(c) of the Act.

Kok San and Lee Teck Chee (accused Nos. 2 and 3) are charged with printing the alleged seditious words in the December (1970) issue of *The Rocket* (English edition) an offence under section 4(1)(c) of the Act.

The evidence tendered by the prosecution is to the effect that on the evening of November 22, 1970, the Democratic Action Party, Penang Branch held a subscription dinner at the Sun Hoe Peng Restaurant, 25 Light Street, Penang, in honour of the release from detention of Mr. Lim Kit Siang, the secretary-general of the party. It was attended by approximately 380-400 members and sympathisers. Several speakers spoke at the dinner including the vice-chairman of the branch, accused No. 1. Two prosecution witnesses

gave evidence that accused spoke at the dinner. The first was Peter Paul Dason, an Advocate and Solicitor and a member of the Democratic Action Party. He was one of the organisers of the dinner. He testified that accused No. 1 was one of the speakers. But he said he cannot remember the exact words of accused No. 1's speech that night. Only after he was referred to the publication (Exh. P3) did he say "that something to this effect was said". The other witness was Chew Hock Chye, a licensed appraiser and a member of the Democratic Action Party. He attended the dinner. He testified that accused No. 1 spoke at the dinner. He identified the article that appeared on page 8 of *The Rocket* (Exh. P3) as "accused No. 1's speech."

In support on this aspect of the prosecution case, the prosecution tendered the statement of accused No. 1 recorded under section 75 of the Internal Security Act, 1960 which I have ruled was made voluntarily. That statement admits that every word that was published in the December 1970 issue of *The Rocket* (English edition) was the full text of his speech. This piece of corroborative evidence established beyond doubt that the words complained of or words equivalent in substance to those words, had been spoken by accused No. 1 at the dinner.

The following facts are proved against accused No. 2. He is the editor of *The Rocket*. An application to publish, sell and distribute *The Rocket* was approved by government (Exh. P5 and Exh. D.7). The name of accused No. 2 is stated therein as its editor and publisher. Miss Chia Sai Teng (P.W.5), a clerk employed by accused Nos. 3 and 4 received the impugned article from accused No. 2 who took it back from her after printing. The impugned article was printed by Life Printers. In his voluntary statement to the police he admitted receiving the impugned article from Dr. Ooi Kee Saik and later sending it to Life Printers for printing. *The Rocket* containing the impugned article was offered to the public for sale. The publication of the impugned article is not disputed. What is disputed is that accused No. 2 is the publisher. In my opinion, when an editor offered a printed article to the public, that is sufficient evidence that he published it. See *McFarlane* v. *Hulton*.[1] I am satisfied that there is evidence which is amply corroborated that accused No. 2 published the impugned article in the December 1970 issue of *The Rocket*.

I now come to accused Nos. 3 and 4. In the application form (Exh. P5) it was stated that the name and address of the printer is Life Printers of No. 2, Jalan 19/1, Petaling Jaya, Selangor. Evidence was given to the effect that both accused Nos. 3 and 4 jointly on October 7, 1969 applied for a printing press licence under section 3(1) of the Printing Presses Ordinance, 1948 (Exh. P8). They were issued with a licence for the year 1970 (Exh. P9). Miss Chia Sai Teng further testified that accused Nos. 3 and 4 are the proprietors of the printing press. At the bottom of page 8 of the impugned publication there are printed the words

"Published by the Democratic Action Party of Malaysia, 77, Jalan 20/9, Paramount Garden, Petaling Jaya, Selangor and printed by Life Printers, 2, Jalan 19/1, Petaling Jaya."

No doubt these words are inserted so as to comply with the provisions of section 5(1) of the Printing Presses Ordinance, 1948. I am satisfied beyond reasonable doubt that accused Nos. 3 and 4 printed the words complained of in the same issue of *The Rocket*.

The next major question to determine is whether the words complained of were seditious within the meaning attributed to it in the Sedition Act. The Sedition Act 1948 came into force on July 19, 1948. Section 4(1) enacts:

"Any person who — (b) utters any seditious words; (c) prints, publishes ... any seditious publication ... shall be guilty of an offence."

Section 2 defines seditious words when applied to or used in respect of any act, speech words, publication having a seditious tendency. Section 3(1) contains the following provisions —

"A 'seditious tendency' is a tendency — (a) to bring into hatred or contempt or to excite disaffection against any Ruler or against any Government; (b) to excite the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure in the territory of the Ruler or governed by the Government, the alteration, otherwise than by lawful means, of any matter as by law established; (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State; (d) to raise discontent or disaffection amongst the subjects of the Yang di-Pertuan Agong or of the Ruler of any State or amongst the inhabitants of Malaysia or of any State; or (e) to promote feelings of ill-will and hostility between different races or classes of the population of Malaysia."

On May 15, 1969, the Yang di-Pertuan Agong issued a Proclamation of Emergency — *vide* P.U.(A) 145/1969. On August 3, 1970, the Yang di-Pertuan Agong promulaged the Emergency (Essential Powers) Ordinance No. 45/1970, which came into force on August 10, 1970. In pursuance of Ordinance No. 45 certain sections of the Sedition Act were amended. A new paragraph (f) was added to section 3(1) of the Sedition Act. The amended section now provides —

"A 'seditious tendency' is a tendency — (f) to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III of the Federal Constitution of Article 152, 153 or 181 of the Federal Constitution."

Section 3(2) of the Act, as amended by Ordinance No. 45 provides —

"Notwithstanding anything in sub-section (1) an act, speech, words, publication or other thing shall not be deemed to be seditious by reason only that it has a tendency — (a) to show that any Ruler has been misled or mistaken in any of its measures; (b) to point out errors or defects in any Government or constitution as by law established (except in respect of any matter, right, status, position, privilege, sovereignty or prerogative referred to in paragraph (f) of sub-section (1) otherwise than in relation to the implementation of any provision relating thereto) or in legislation or in the administration of justice with a view to the remedying of the errors or defects; (c) except in respect of any matter, right, status, position, privilege, sovereignty or prerogative referred to in paragraph (f) of sub-section (1) —

(i) to persuade the subjects of any Rulers or the inhabitants of any territory governed by any Government to attempt to procure by lawful means the alteration of any matter in the territory of such Government as by law established; or

(ii) to point out, with a view to their removal, any matters producing or having a tendency to produce feelings of

ill-will and enmity between different races or classes of the population of the Federation,

if the act, speech, words, publication or other thing has not otherwise in fact a seditious tendency."

Section 3(3) is not affected by Ordinance No. 45/70. It provides —

"For the purpose of proving the commission of any offence against this Act the intention of the person charged at the time he .... uttered any seditious words or printed, published .... any publication .... shall be deemed to be irrelevant if in fact the .... words, publication .... had a seditious tendency."

In interpreting the Sedition Act, 1948, I have been urged by Sir Dingle Foot to follow the common law principles of sedition in England. In England it can now be taken as established that in order to constitute sedition the words complained of are themselves of such a nature as to be likely to incite violence, tumult or public disorder. I can find no justification for this contention. The opinion of the Judicial Committee of the Privy Council in *Wallace-Johnson* v. *The King*[2] demonstrated the need to apply our own sedition law although there is close resemblance at some points between the terms of our sedition law and the statement of the English law of sedition. I can find of no better reason than that of Stratchey J. who pointed out in *Queen Empress* v. *Balagangadhar Tilak*[3] that the Indian law of sedition which is found in section 124A of the Indian Penal Code (which is quite similar to section 3(1) of our Sedition Act) is a statutory offence and differs in that respect from its English counterpart which is a common law misdemeanour elaborated by the decisions of the judges. The English common law of sedition was received in Australia but the offence is now statutory. The statutory definitions of sedition which are to be found in the Crimes Act 1914-1946 of Australia are almost identical with the common law definition and yet in the prevailing decision in *Burns* v. *Ransley*,[4] Latham C.J. found it unnecessary to consider the common law of sedition. In my view there is a good deal to be said for the enlightened view. Although it is well to say that our sedition law had its source, if not its equivalent from English soil, its waters had, since its inception in 1948, flowed in different streams. I do not think it necessary to consider the matter in great detail because I have been compelled to come to the conclusion that it is impossible to spell out any requirement of intention to incite violence, tumult or public disorder in order to constitute sedition under the Sedition Act. The words of subsection (3) of section 3 of our Sedition Act and the subject-matter with which it deals repel any suggestion that such intention is an essential ingredient of the offence.

I reject the liberal interpretation of the provisions of section 124A of the Indian Penal Code as adopted by courts in India which brought the Indian law of sedition at par with English law. (See *Niharendu Majumdar* v. *King Emperor*;[5] *Kedar Nath* v. *State of Bihar*[6]). I rely on the strict and literal interpretation as adopted by the Privy Council cases: see *Tilak's* case, *supra; Wallace-Johnson, supra; King Emperor* v. *Sadashiv Narayan*[7]).

In my view what the prosecution have to prove and all that the prosecution have to prove is that the words complained of, or words equivalent in substance to those words, were spoken by accused No. 1 at the dinner party. Once that is proved the accused will be conclusively presumed to have intended the natural consequences of his verbal acts and it is therefore sufficient if his words have a tendency to produce any of the consequences stated in section 3(1) of the Act. It is immaterial whether or not the words complained of could have the effect of producing or did in fact produce any of the consequences enumerated in the section. It is also immaterial whether the impugned words were true or false. (See *Queen Empress* v. *Ambra Prasad*[8]). And it is not open to the accused to say that he did not intend his words to bear the meaning which they naturally bear. (See *Maniben* v. *Emperor*[9])

Before I proceed to deal with the facts there is one point which assumes importance in the defence submission. Sir Dingle Foot has stressed the need to give the greatest latitude to freedom of expression. Dato Seenivasagam, as I understand him, said that the Sedition Act strikes at the very heart of free political comment. It is of course true, as a general statement, that the greatest latitude must be given to freedom of expression. It would also seem to be true, as a general statement, that free and frank political discussion and criticism of government policies cannot be developed in an atmosphere of surveillance and constraint. But as far as I am aware, no constitutional state has seriously attempted to translate the 'right' into an absolute right. Restrictions are a necessary part of the 'right' and in many countries of the world freedom of speech and expression is, in spite of formal safeguards, seriously restricted in practice. In the United States all types of speech "can claim no talismanic immunity from constitutional limitations. It must be measured by standards that satisfy the First Amendment." (See *New York Times Co.* v. *Sullivan*[10]). The Supreme Court of India too has conceded that fundamental rights are subject to limitations in order to secure or promote the greater interests of the community. If I may quote a passage from *A. K. Gopalan* v. *State of Madras*: [11]

"There cannot be any such thing as absolute or uncontrolled liberty wholly free from restraint; for that would lead to anarchy and disorder. The possession and enjoyment of all rights ... are subject to such reasonable conditions as may be deemed to be, to the governing authority of the country, essential to the safety, health, peace and general order and moral of the community ..... What the Constitution attempts to do in declaring the rights of the people is to strike a balance between individual liberty and social control."

In England too, there is no unrestricted freedom of expression. *Dicey's* summary of the situation still holds good:

"Freedom of discussion in England is little else than the right to write or say anything which a jury of 12 shopkeepers think it expedient should be said or written. Such 'liberty' may vary at different times from unrestricted licence to severe restraint .... the amount of latitude conceded to the expression of opinion has in fact varied greatly according to the condition of popular sentiment."

(See Law of the Constitution, 3rd edition, p. 231). In this connection it is not out of place if I quote the well-known words of Sir Samuel Griffith C.J. in *Duncan*

v. *State of Queensland*,[12] which were quoted in the Privy Council case of *Freightlines, etc. Ltd.* v. *State of New South Wales*: [13]

"But the word 'free' does not mean extra *legem* any more than freedom means anarchy. We boast of being an absolutely free people, but that does not mean that we are not subject to law."

My purpose in citing these cases is to illustrate the trend to which freedom of expression in the constitutional states tends to be viewed in strictly pragmatic terms. We must resist the tendency to regard right to freedom of speech as self-subsistent or absolute. The right to freedom of speech is simply the right which everyone has to say, write or publish what he pleases so long as he does not commit a breach of the law. If he says or publishes anything expressive of a seditious tendency he is guilty of sedition. The Government has a right to preserve public peace and order, and therefore, has a good right to prohibit the propagation of opinions which have a seditious tendency. Any government which acts against sedition has to meet the criticism that it is seeking to protect itself and to keep itself in power. Whether such criticism is justified or not, is, in our system of Government, a matter upon which, in my opinion, Parliament and the people, and not the courts, should pass judgment. Therefore, a meaningful understanding of the right to freedom of speech under the Constitution must be based on the realities of our contemporary society in Malaysia by striking a balance of the individual interest against the general security or the general morals, or the existing political and cultural institutions. Our sedition law would not necessarily be apt for other people but we ought always to remember that it is a law which suits our temperament.

A line must therefore be drawn between the right to freedom of speech and sedition. In this country the court draws the line. The question arises: where is the line to be drawn; when does free political criticism end and sedition begin? In my view, the right to free speech ceases at the point where it comes within the mischief of section 3 of the Sedition Act. The dividing line between lawful criticism of Government and sedition is this — if upon reading the impugned speech as a whole the court finds that it was intended to be a criticism of Government policy or administration with a view to obtain its change or reform, the speech is safe. But if the court comes to the conclusion that the speech used naturally, clearly and indubitably, has the tendency of stirring up hatred, contempt or disaffection against the Government, then it is caught within the ban of paragraph (a) of section 3(1) of the Act. In other contexts the word "disaffection" might have a different meaning, but in the context of the Sedition Act it means more than political criticism; it means the absence of affection, disloyalty, enmity and hostility. To 'excite disaffection' in relation to a Government refers to the implanting or arousing or stimulating in the minds of people a feeling of antagonism, enmity and disloyalty tending to make government insecure. If the natural consequences of the impugned speech is apt to produce conflict and discord amongst the people or to create race hatred, the speech transgresses paragraphs (d) and (e) of section 3(1). Again paragraph (f) of section 3(1) comes into play if the impugned speech has reference to question any of the four sensitive issues — citizenship, national language, special rights of the Malays and the sovereignty of the Rulers.

The speech begins by reference to Lim Kit Siang who had been detained without trial. It goes on to say that his arrest was a mindless over-reaction on the part of the Alliance Government. After saying that his detention without trial reflects the way how democracy is practised in Malaysia, we come to the second paragraph which shows the standpoint of the speech. It says the reason why the Alliance Government is not making any headway in the problem of forging a new Malaysian nation, of creating a Malaysian identity which truly and honestly reflects the various racial strands in our country is because the Alliance Government practices a policy of segregation. It then cites six instances of the Alliance Government's policy of segregation. The third and fourth paragraphs refer to the Democratic Action Party's stand in building a multi-racial Malaysian nation. The fifth paragraph stresses the need to have a common denominator. It says a Malaysian citizen is a Malaysian citizen full-stop and without a whole list of restrictive clauses. It goes on to say that when Alliance Ministers made pronouncements that there is a place for everybody under the Malaysian sun, those pronouncements are tainted with partiality, favouring one group of citizens in place of another.

My purpose in making the citation from the impugned speech is to show why I think that the speech which is certainly full of hatred and bitterness is clearly directed against the Government. It is doing exactly what Stratchey, J. in *Tilak's* case said must not be done:

"But if he goes on beyond that, and, whether in the course of comments upon measures or not, holds up the Government itself to the hatred or contempt of its readers — as for instance, by attributing to it every sort of evil and misfortune suffered by the people, or imputing to it base motives, or accusing it of hostility or indifference to the welfare of the people — then he is guilty under the section, and the explanation will not save him."

There can be no doubt that Dr. Ooi's speech was very carefully prepared. It was not made casually and without purpose. The real gravamen of the charge which Dr. Ooi brings against the Government is that Government is siding the Malays. Dr Ooi refers to six instances in which it is said that the Malays are in a privileged position. The speech seems to me to be a sustained attempt on the part of Dr. Ooi to hold the Government in hatred and contempt and to excite disaffection. I must point out that allegations of partiality (and we are not concerned with its falsity or truth) in favour of one ethnic group is of itself clear evidence on the part of Dr. Ooi to bring the Government into hatred or contempt, or excite feelings of disaffection against the Government. To accuse the Government of gross partiality in favour of one group against another is, in my opinion, calculated to inspire feelings of enmity and disaffection amongst the people of this country. I further find that Dr. Ooi's scurrilous attacks on one ethnic group and

disseminating false views played a significant part in creating racial tensions that on another occasion had resulted in race riots. Such speech is apt to promote feelings of ill-will and hostility among the different races in this country. The speech also touches on the special rights of the Malays. The baseness of its motives lies in the readiness of Dr. Ooi to touch on this sensitive issue. That, in my view, is caught within the mischief of paragraph (f) of section 3(1) of the Act.

In my view the speech taken as a whole, after making all allowances for the enthusiasm of the speaker, goes very much beyond the limits of freedom of expression. It proceeds upon well worn lines — partiality of Government in favour of the Malays. I am satisfied that the impugned speech is expressive of a seditious tendency.

That is not the end of the matter. Sir Dingle Foot has attacked the validity of the Emergency (Essential Powers) Ordinance No. 45 of 1970, on the ground that it infringes the legislative authority of the Federal Parliament which is vested in a Parliament consisting of the Yang di-Pertuan Agong and both Houses of Parliament (article 44). In other words, learned counsel says Parliament only can legislate emergency laws and any legislative power assigned to the executive is unconstitutional amounting to an abrogation by Parliament of its power to legislate. With due respect I think that contention is untenable. Were learned counsel reviewing the situation in England I would have agreed with his proposition. In England the executive does not possess such independent power of legislation. Nor is there a precedent of such a power existing in the Dominions except in India (see article 123 of the Indian Constitution). It is true that like the Queen in England, the Yang di-Pertuan Agong is a component part of Parliament. But our Constitution is framed in such language as by known intentions of the draftsman to allow for far-reaching powers in the Yang di-Pertuan Agong in the sphere of legislation when Parliament is not sitting. Article 150 confers on His Majesty powers to promulgate emergency laws. His Majesty is the sole judge of the necessity of issuing emergency laws and he is not to give reasons for promulgating it. It is therefore clear that the power of the Yang di-Pertuan Agong to legislate by Ordinance when Parliament is not sitting is co-extensive with the power of Parliament itself.

That brings me to one point taken by Dato S. P. Seenivasagam. Learned counsel's argument is based on the premise that since emergency laws promulgated when Parliament is not sitting have a temporary existence, such laws must receive legislative sanction on the re-covening of Parliament and that implies that the Yang di-Pertuan Agong must summon Parliament as soon as possible and not wait until 1 year and 9 months after the proclamation of emergency. Clause (2) of article 150 is enacted in two parts. The first part provides:

"If a Proclamation of Emergency is issued when Parliament is not sitting, the Yang di-Pertuan Agong shall summon Parliament as soon as may be practicable."

"When Parliament is not sitting" must mean "when Parliament is not in session", in other words "when Parliament is prorogued or dissolved." The phrase "as soon as may be practicable" reduces the obligation of the Yang di-Pertuan Agong to summon Parliament from being absolute and unqualified to being what is possible having regard to existing conditions including the circumstances that the general Parliamentary election was not yet completed. Any other view would render inept the provisions of clause (2) of article 150. His Majesty is again the sole judge of "when it is possible" to summon Parliament and the matter is above judicial review. In my opinion the long delay in summoning Parliament does not affect the validity of Ordinance No. 45.

The learned Solicitor-General in his submission quite properly submitted that in interpreting a written constitution such as the Federation of Malaya Constitution the court must look at the expressed wording of the written constitution itself rather than be guided by extraneous principles of other constitutions. The principle of interpretation of a written constitution was enunciated by Vicount Radcliffe in *Adegbenro* v. *Akintola*.[14] In view of the fact that Ordinance 45 was purportedly to have been promulgated under article 150 of the Constitution, it is to the wording of that article that I must look for an answer.

Clause (1) of article 150 gives the Yang di-Pertuan Agong power to proclaim a state of emergency if satisfied that a grave emergency exists whereby the security of the Federation is threatened. It is common knowledge that the civil disturbances broke out in Kuala Lumpur on May 13, 1969 and spread all over the country. On May 15, 1969 the Yang di-Pertuan Agong proclaimed a state of emergency throughout the country *vide* P.U.(A) 145/69. The fact that the Yang di-Pertuan Agong issued the proclamation showed that he was so satisfied that a grave emergency existed whereby the security of the whole country was at stake. (See *Special Reference No. 1 of 1964*[15]). Counsel have not challenged the validity of the proclamation. Indeed the proclamation is not justiciable. (See *Bhagat Singh* v. *King-Emperor*[16] and *King-Emperor* v. *Benoari Lal Sarma*[17]). The same principles governing discretionary powers confided to subordinate administrative bodies cannot be applied to the Yang di-Pertuan Agong and are inapplicable. His Majesty occupies a special position. This reasoning equally applies to the question of justiciability of Ordinances promulgated under clause (2) of article 150.

There is a further consideration on this aspect of the case which is equally applicable to the provisions of clause (1) of article 150. Clause (2) of article 150 gives power to the Yang di-Pertuan Agong during the period an emergency proclamation is issued when Parliament is not sitting to promulgate ordinances which have the force of law "if satisfied that immediate action is required." I will now refer to an Australian case which has expressed the view that action taken by the Governor-General in Council under such power "if he is satisfied" that a certain state of affairs exist is not justiciable so long as the declaration recites the statutory formula. That is the case of *Australian Communist Party* v. *The Commonwealth*[18] which concerns the constitutional validity of the Communist Party

Dissolution Act, 1950. Section 5(2) of the Act gave power to the Governor-General in Council to declare a body of persons to be an unlawful association where "the Governor-General-in-Council is satisfied" that the body of persons had certain specified characteristics. The Australian High Court held the Act unconstitutional because the declaration was not properly framed. Dixon J. said at p.178-179:

"... the expression by the Governor-General in Council of the result in a properly framed declaration is conclusive. In the case of the Governor-General in Council it is not possible to go behind such an executive act done in due form of law and impugn its validity upon the ground that the decision upon which it is founded has been reached improperly, whether because extraneous considerations were taken into account or because there was some misconception of the meaning or application, as a court would view it, of the statutory description of the matters of which the Governor-General in Council should be satisfied or because of some other supposed miscarriage."

Wijeysekera v. *Festing*[19] is an older case to the same effect. Another case which supports this view is *Land Realisation Co. Ltd.* v. *Post Office.*[20]

What the court is interested is to examine the emergency law in question and see whether it has been issued within the scope of the powers conferred by the Constitution. Once the court has determined that such law lies within the province of a competent authority, the court is not authorised to reweigh what a competent authority has weighed. The court will not assume the role of a third legislative chamber. I cannot forbear quoting a passage from the opinion of Lord Guest in *Akar* v. *Attorney-General of Sierra Leone*: [21]

"Although the courts are the guardians of the Constitution I believe that in interpreting the Constitution the ground has to be trod warily and with great circumspection. .... The courts cannot go behind the scene and enquire what were the motives or policy behind a particular piece of legislation. They can only as a matter of construction decide whether the Act is or is not within the powers of the Constitution. This question must be decided on the terms of the Act in conjunction with the provisions of the Constitution."

Adopting the principles of law enunciated by Dixon, J. in the *Australian Communist Party's* case and applying them to the present case there can be no doubt that Ordinance No. 45 was promulgated within the four corners of clause (2) of article 150. The Ordinance had recited the statutory formula. The recital is conclusive and that closed the door to all review. The onus now shifts to those who wish to challenge its validity by proving *mala fides* or bad faith. (See *Stephen Kalong Ningkan* v. *Government of Malaysia*[22]). That has not been done. In my judgment Ordinance No. 45 is not violative of clause (2) of article 150.

I now call on the defence of the four accused.

Accused Nos. 1 and 2 elect to remain silent.

Accused No. 3 gave evidence and so did accused No. 4. They say they did not know the contents of the impugned article was seditious. They do not read or write English nor do they employ English translators.

Now section 6(2) of the Sedition Act enacts —

"No person shall be convicted of any offence referred to in section 4(1) (c) or (d) if the person proves that the publication in respect of which he is charged was printed, ... without his authority, consent and knowledge and without any want of due care or caution on his part, or that he did not know and had no reason to believe that the publication had a seditious tendency."

It may be stated here that the onus on the accused is not as heavy as that which rests on the prosecution to prove the facts which they have to establish and may be discharged by evidence satisfying the court of the probability of that which they are called upon to establish. In my judgment they have not satisfied the burden of proof imposed upon them by the sub-section inasmuch as bare words to the effect that they did not know the contents of the impugned article was seditious is not even *prima facie* evidence of absence of knowledge or reasonable belief.

I therefore find each of the accused guilty and I convict them.

I now come to the most painful task of the trial *i.e.*, to impose a suitable sentence on each of the accused. Although intention to incite violence, tumult and public disorder is not the criterion of guilt that is a relevant factor in assessing sentence. Dr. Ooi in his statement to the police has stated that he had no intention to incite feelings of hatred, enmity or hostility among the races. He is a responsible man and I accept his words.

In imposing sentence it is necessary to consider the public interest as well as the interests of the accused. It has been stated that speeches of this nature were permitted and indeed fashionable prior to May 13, 1969. The Attorney-General's department has now deemed fit to enforce the law of sedition in recognition of the changing conditions in this country.

I have seriously considered what sentence to impose on each of the accused. I think a term of imprisonment would not be appropriate in the circumstances of this case. In my view a fine would be adequate. Since this court has drawn a line between political criticism and sedition, let that in future be the yardstick.

I impose on each of the accused a fine of $2,000 in default six months' imprisonment.

Order accordingly.